



## Summary of Proposed Regulations

This article is provided to summarize the proposed regulations to complement the new agency statute, and more specifically, outline the requirements of the proposed regulation 4 CSR 250-8.095. The Commission has considered questions and concerns regarding the original proposals and has amended the regulations where possible to accommodate concerns while maintaining maximum protection of the public. The following is an overview of the new proposals:

**1. 4 CSR 250-8.090** - The regulation will now require that the broker hold a current listing agreement or other written authorization to advertise or place a sign on a property offering it for sale or lease. It will basically prohibit a licensee associated with one brokerage from advertising another brokerage's listing.

Also, the regulation has been expanded to cover the three basic types of brokerage service agreements: 1) listing agreements, 2) buyer's agency agreements, and 3) other written authorization. The Commission has expanded the items required in each agreement to include the licensee's duties and responsibilities. The new statute requires that specific duties be identified in the agency agreement to create a limited agency relationship. Each licensee should examine their agreements to determine whether or not the agreements create a limited agency relationship. If the agreements do not create a limited agency relationship, the licensee is acting as another type of agent with respect to the Broker Disclosure Form. If the licensee is acting under an "other" type of agency relationship, the written policy on agency must authorize this type of relationship. The regulation spells out the items required in all types of agency agreements. One important new item, which will be required in a listing agreement, is a statement concerning the presumption of buyer's agency. This item corresponds with the proposed regulation 4 CSR 250-8.095.

**2. 4 CSR 250-8.095** - This regulation was rewritten in response to concerns of licensees regarding oral disclosure prior to showing, when the first showing is also the first substantial contact with the unrepresented customer. In this scenario, the licensee makes an appointment to show a property with the listing agent and meets the potential buyers for the first time at the property. The prior regulation would have required the licensee to present the Broker Disclosure Form, establish an agency relationship, and, if hired as a

buyer's agent, make a second phone call to the listing agent to orally disclose this relationship, all prior to showing the property.

Since the statutes create a presumption of buyer's agency, the proposed regulation has eliminated oral disclosure of a licensee's buyer's agency relationship to a seller who is represented by another licensee. Oral disclosure is still required prior to showing by a licensee acting as a seller's agent or subagent of the seller's agent, or as a buyer's agent or subagent of the buyer's agent showing unlisted property. Remember that any licensee associated with a listing brokerage that does not offer designated agency has an agency status as a seller's agent. Per the statute, 339.780, RSMo, a licensee who has an agency status must provide the Broker Disclosure Form to an unrepresented customer prior to engaging in any of the acts enumerated in 339.010, RSMo.

At this point the licensee has two options to consider:

**1.** The first is that the licensee can present the Broker Disclosure Form, discuss agency with the customers, and establish an agency relationship prior to showing. If these customers do not wish to hire the licensee as a buyer's agent, the licensee would then orally disclose his subagency status and show them the property. (This assumes that a unilateral offer of subagency has been made or that a written agreement of subagency between the licensees exists and subagency is offered by the sellers.) If the licensee was hired as a buyer's agent, no oral disclosure would be required as the presumption of buyer's agency is already in place.

### Also in this Issue

#### Proposed Amendments

#### Agency: Questions & Answers

#### Disciplinary Actions

#### Continuing Education Credit

#### Renewal Information

**Governor**

The Honorable Mel Carnahan

**Department of Economic Development**

Joseph L. Driskill, Director

**Division of Professional Registration**

Randall J. Singer, Director

**Missouri Real Estate Commission**

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St. Louis, Missouri

Barbara R. Stuckey, Member  
Parkville, Missouri

Mary L. Vernassie, Member  
Belton, Missouri

Janet Carder, Executive Director

3605 Missouri Boulevard  
P.O. Box 1339  
Jefferson City, MO 65102  
(573) 751-2628  
Fax (573) 751-2777  
E-Mail [jcarde01@mail.state.mo.us](mailto:jcarde01@mail.state.mo.us)



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2. The second option is to show the property to the unrepresented buyer under the presumption of buyer's agency as allowed by statute. If this option is selected, it is then critical for the licensee to determine when first substantial contact occurs. Regulation 4 CSR 250-8.097 has been amended to clarify that the Broker Disclosure Form shall be provided upon obtaining any personal or financial information. Again, this is a guideline and does not indicate that the first substantial contact cannot occur prior to this event. If no substantial contact occurs during this first showing, the licensee can provide the Broker Disclosure Form as the relationship develops while paying attention to compliance with 339.770.1, RSMo and 4 CSR 250-8.097. The presumption of buyer's agency will be realized if the licensee is hired as a buyer's agent.

If the licensee is not hired by the buyer as a buyer's agent, if no substantial contact has occurred, and if subagency is offered by the seller, the licensee may still become a subagent for this or subsequent properties.

There is, however, a potential risk for a licensee showing property under the presumption of buyer's agency. The problem occurs when the buyer gives the licensee personal or financial information during the showing and then does not wish to hire the licensee as a buyer's agent when the licensee provides the Broker Disclosure Form. The licensee now has information learned under the presumption of buyer's agency but has not subsequently been hired as a buyer's agent. This may prohibit other agency relationships for this licensee for this particular transaction.

Written agency disclosures are required in all instances. The licensee shall make written disclosure of the licensee's agency status no later than the offer to purchase. The written disclosures are required by the selling agent (the agent procuring the buyer or tenant). The disclosure is required to be signed and dated by the disclosing licensee and the party or parties not represented by that licensee.

In dual agency, oral disclosure to all parties is required upon the occurrence of this agency status. Written disclosure is required no later than the offer to purchase. Two issues have been clarified by the proposed regulation. The first is that the oral and written disclosure of the selling licensee (licensee procuring the buyer) will serve as disclosures for both the listing licensee and designated broker. The second is in regards to a designated broker who becomes a dual agent in a designated agency transaction due to broker supervision but does not personally represent any of the parties. In this situation, the designated broker, will not be required to make disclosures, provided he or she has previously obtained written consent by all parties pursuant to the statute.

3. **4 CSR 250-8.097** - The regulation has been amended to clarify that in any event, the Broker Disclosure Form must be given upon obtaining any personal and financial information. This requirement gives further direction for determining when first substantial contact occurs. The regulation also requires that the Broker Disclosure Form be completed in its entirety.

The above information has not covered each and every possibility which can occur during the development of an agency relationship. This information is provided to give a general overview of the proposed regulations when put into practice. It is imperative that the licensee become knowledgeable of both the agency statute and the regulations and read them in conjunction with each other to gain full knowledge.

## Proposed Amendments

**Bold** type indicates proposed regulations while [ ] indicate information which will be deleted.

### 4 CSR 250-8.020 Broker Supervision and Improper Use of License and Office

(1) Individual [and] **brokers, designated brokers, and office managers/supervising brokers** shall be responsible for supervising the real estate related activities **including the protection of any confidential information as defined under 339.710.8, RSMo** of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership. A broker shall not be held responsible for inadequate supervision if—

(3) **Appointments of designated agents under section 339.820, RSMo shall be entered into by the designated broker or office manager/supervising broker on behalf of that broker and affiliated licensees.**

(4) **Appointments of designated agents under section 339.820, RSMo shall be made in a written agreement for a brokerage relationship or other written notice to the client.**

(5) **Individual brokers, designated brokers, and office managers/supervising brokers shall not be considered to be a dual agent solely because such broker makes an appointment under section 339.820, RSMo. However, when such broker supervises the licensees for both sides of a transaction, that broker will be a dual agent upon learning confidential information about either party to a transaction or upon being consulted by any licensee involved in the transaction. Also, when the broker supervises the licensee for one (1) side of the transaction and personally represents the other side, that broker will be a dual agent.**

### 4 CSR 250-8.090 [Listings] Brokerage Relationship Agreements or Authorization

(1) A licensee shall not advertise or place a sign upon any property offering it for sale or lease to prospective customers unless [a] **the broker holds a currently effective written listing agreement or other written authorization signed by [the seller] all owners.**

(2) A licensee shall not show residential property unless a broker holds a currently effective written listing agreement [or], **other written agreement for brokerage services, or as a buyer's agent with** other written authorization [signed by the seller] **to show.**

### **(3) Seller's Agency (Listing) Agreement.**

[(3)] **(A)** Every written listing agreement or other written [authorization] **agreement for brokerage services** shall contain all of the following:

[(A)] The legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property;

(B) All of the terms and conditions under which the property is to be sold, leased or exchanged, including:]

1. The price;

2. The commission to be paid (including any and all bonuses);

3. A definite beginning date;

4. An expiration date;

5. **The licensee's duties and responsibilities;**

6. **Specification of whether an offer of subagency may be made;**

7. **A clear statement to the seller/landlord(s) explaining the effects of the presumption of buyer's agency. This statement shall contain—**

**A. Missouri law presumes that, absent some other relationship being established, a licensee working with a buyer represents that buyer; and**

**B. That, as a result, any licensee showing property may represent the buyer; and**

**C. A licensee working with a buyer may be required to disclose to the buyer any information given to them by the seller;**

[(5)] **8.** The signatures of all [sellers] **owners** and the listing broker or listing agent **as authorized by the broker;** [and]

[(6)] **9.** The type of listing, [that is,] **such as** exclusive agency, exclusive right to sell or open[.];

**10. The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property; and**

**11. All other terms and conditions under which the property is to be sold, leased or exchanged.**

[(4)] **(B)** The agreement shall contain no provision requiring an owner to notify the broker of intent to cancel the listing after the expiration date. [Any change to the listing agreement or other written authorization must contain the initials of all parties.]

**(C) Any change to the listing agreement or other written agreement for brokerage services must contain the initials of all parties.**

[(5)] **(D)** [A] **The licensee shall give a legible copy of every written listing agreement or other written [authorization shall be given] agreement for brokerage services** to the owner of the property at the time the signature of the owner(s) is obtained.

[(6)] **(E)** A licensee shall not negotiate or enter into a listing agreement with an owner if the licensee knows, or has reason to know, that the owner has a written unexpired exclusive agency or exclusive right to sell listing agreement as to the property with another broker, unless the owner initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into a listing which will take effect after the expiration of the current listing.

[(7)] **(F)** No licensee shall make or enter into a net listing agreement for the sale **or lease** of real property or any interest in real property; this agreement is defined as one that

stipulates a net price to be received by the owner with the excess over that price to be received by the broker as commission.

[(8) On taking a listing, a licensee shall use due care and diligence to investigate, substantiate and verify the accuracy of all information supplied by an owner and contained in the listing, which the licensee reasonably knows or should know is material or substantial or may be relied upon by a buyer.]

[(9)] **(G) A listing agreement or other written agreement for brokerage services** may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original [listing] agreement.

**(4) Buyer's Agency Agreement.**

**(A) Every written buyer or tenant authorization shall contain all of the following:**

- 1. A description of the type of property sought by the buyer or tenant;**
- 2. The commission or fee to be paid (including any and all bonuses);**
- 3. A definite beginning date;**
- 4. A definite expiration date;**
- 5. The licensee's duties and responsibilities;**
- 6. Specification of whether an offer of subagency may be made;**
- 7. The signatures of the buyers or tenants and the broker or agent as authorized by the broker;**
- 8. The type of agreement, such as exclusive agency, exclusive right to represent or open; and**
- 9. All other terms and conditions prescribed by the buyers or tenants.**

**(B) The agreement shall contain no provision requiring a buyer or tenant to notify the broker of intent to cancel the agreement after the expiration date.**

**(C) Any change to the agreement or other written authorization must contain the initials of all parties.**

**(D) The licensee shall give a legible copy of every written agreement or other authorization to the buyer or tenant at the time the signatures are obtained and a copy of the written authorization shall be retained in the broker's office.**

**(E) A licensee shall not negotiate or enter into an agency agreement with a buyer or tenant if the licensee knows, or has reason to know, that the buyer or tenant has a written unexpired exclusive agreement with another broker, unless the buyer or tenant initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.**

**(F) A buyer or tenant agency agreement may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original buyer or tenant agency agreement.**

**(5) Other Written Authorization.** Written authorization to show residential property without a brokerage agreement with the owner/landlord must contain all of the following:

- (A) A definite beginning date;**
- (B) An expiration date;**
- (C) The signatures of all owners or landlords and the broker or licensee as authorized by the broker;**

**(D) The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property;**

**(E) Permission to enter and show the property;**

**(F) The commission or fee to be paid (including any and all bonuses); and**

**(G) All other terms and conditions prescribed by the owners or landlords.**

**RESCIND ENTIRE 4 CSR 250-8.095 and replace with the following:**

**4 CSR 250-8.095 Agency Disclosure**

**(1) A licensee acting under any agency status other than dual agency as the agent procuring the buyer or tenant in a real estate transaction shall make oral and written disclosure of the licensee's agency status.**

**(A) The licensee shall make oral disclosure of the licensee's agency status to the unrepresented party (customer) no later than the first showing of real estate. A licensee acting under the presumption of buyer/tenant agency or as a buyer/tenant agent in a real estate transaction with a seller/lessor that has entered into an agency agreement with another licensee shall not be required to make oral disclosure of his/her agency status.**

**(B) The licensee shall make written disclosure of the licensee's agency status no later than the offer to purchase or lease by the buyer or tenant. Written disclosure must—**

- 1. Identify the licensee's agency status;**
- 2. Identify the source or sources of compensation; and**
- 3. Be signed and dated by the customer or client not represented by the disclosing licensee (customer/client) and the disclosing licensee.**

**(C) A signed copy shall be given to the parties receiving the disclosure and a signed copy shall be retained by the disclosing licensee's broker. If the customer/client refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of refusal and the explanation shall be retained by the licensee's broker.**

**(2) A licensee acting as a dual agent in a real estate transaction shall make oral and written disclosure of the licensee's agency status. In a nondesignated agency transaction, the oral and written disclosures by the licensee procuring the buyer or tenant shall serve as disclosures for the listing licensee and designated broker. A designated broker who becomes a dual agent and does not personally represent any of the parties in a designated agency transaction shall not be required to make oral or written disclosures of this agency status provided written consent was given by all parties to the real estate transaction pursuant to section 339.750.1, RSMo.**

**(A) Oral disclosure of a licensee's dual agency status shall be made upon its occurrence to all parties to the real estate transaction.**

**(B) Written disclosure of a licensee's dual agency status shall be made to all parties to the real estate transaction no later than the offer to purchase. The written disclosure must—**

1. Identify the licensee's agency status;
2. Identify the source(s) of compensation; and
3. Be signed and dated by all parties to the real estate transaction and the disclosing licensee.

(C) A signed copy shall be given to all parties to the transaction and a signed copy shall be retained by the disclosing licensee's broker. If the customer/client refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of refusal and the explanation shall be retained by the licensee's broker.

#### **4 CSR 250-8.097 Broker Disclosure Form**

(1) At the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a written agreement for services as described in section 339.710.5, RSMo, the licensee shall provide that person with a written copy of the current Broker Disclosure Form prescribed by the Missouri Real Estate Commission. In any event, a licensee shall provide the unrepresented party (customer) the Broker Disclosure Form upon obtaining any personal or financial information. If the prospective customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.

(2) The licensee providing the Broker Disclosure Form is required to see that the prescribed form is completed in its entirety.

#### **4 CSR 250-8.110 Licensee's Interest in Transactions; Relationship with Parties**

(6) [A licensee shall disclose to a prospective buyer or lessee all material facts of which the licensee's has knowledge or which are readily available to the licensee including the condition of any property which the licensee is offering for sale or lease.] An "as is clause" written into a contract for the sale of real estate does not relieve a licensee of the requirements of [this] section 339.100.2 (2), RSMo.

#### **4 CSR 250-8.150 Closings and Closing Statements**

(2) A broker may arrange for a closing to be administered by a title company, an escrow company, a lending institution or an attorney, in which case the broker shall not be required to sign the closing statement; however, it shall remain [the] **each** broker's responsibility to require closing statements to be prepared, to review the closing statements to verify their accuracy and to deliver the closing statements to the buyer and the seller or cause them to be delivered. The detailed closing statement shall contain all material financial aspects of the transaction, including the true sale price, the earnest money received, any mortgages or deeds of trust of record, all monies received by the broker, closing agent or company in the transaction, the amount, and payee(s) of all disbursements

made by the broker, closing agency or company and the signatures of the buyer and seller.

(3) [The listing and selling broker] **The brokers for the buyer and the seller** shall retain legible copies of both buyer's and seller's signed closing statements.

#### **4 CSR 250-8.155 Closing a Real Estate Firm**

(1) Voluntary Closing.

(A) Unless specifically approved otherwise by the commission, a real estate brokerage firm shall be closed in the following manner. The individual broker or the designated broker shall—

3. Notify all **current** listing, **buyer, or tenant agreement** and management **contract** clients as well as parties and co-brokers to existing contracts, in writing, advising of the date the firm will close. All listing, **buyer, tenant** and management clients must be advised in writing that they may enter into a new listing, **buyer, tenant** or management agreement with the broker of their choice;

(2) Revocation/Suspension.

(A) Sole-Proprietorship/Individual Broker. Upon the revocation or suspension of a broker's license, the broker shall—

4. Notify all **current** listing, **buyer or tenant agreement**, and management contract clients in writing advising of the date the firm will close or suspend activity, and that they may enter into a new listing, **buyer or tenant agreement** or management agreement with the firm of their choice;

#### **4 CSR 250-8.160 Retention of Records**

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; **broker disclosure forms and brokerage relationship agreements**; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

#### **4 CSR 250-10.010 Requirements**

(4) Effective October 1, 1998, any person who has been issued an original resident, nonresident or reciprocal salesperson license shall, prior to the date of expiration of the original salesperson license, satisfactorily complete his/her twelve (12) hours of continuing education instruction in a classroom course of study entitled Missouri Real Estate Practice; and any person who has been issued an original resident, nonresident or reciprocal broker license prior to completing the course entitled Missouri Real Estate Practice must complete his or her Missouri Real Estate Practice course prior to the date of expiration of the original broker license.

**No licensee shall be granted continuing education credit for completing Missouri Real Estate Practice after the expiration date of the initial license.**

[(4)] (5) Individual licensees may receive continuing education credit for classroom courses taken in Missouri or another state which have not been previously submitted by the sponsor for approval, provided course content, instructor qualifications and course administration are acceptable to the commission. Applications for non-preapproved course credit must be on a form prescribed by the commission, accompanied by a nonrefundable evaluation fee of ten dollars (\$10).

[(5)] (6) The commission may waive all or part of the continuing education requirements upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for the following causes:

- (A) Serious physical injury or illness;
- (B) Active duty in the armed services for an extended period of time;
- (C) Residence outside the United States;
- (D) Membership in the Missouri Bar;
- (E) Licensee is at least eighty (80) years of age;
- (F) Licensee has been licensed continuously since 1942;
- (G) Member of the Missouri Senate or House of Representatives at any time during the renewal period to which the waiver applies; and
- (H) Member on the Missouri Real Estate Commission during any portion of the renewal period to which the waiver applies.

[(6)] (7) The following offerings will not be considered by the commission to meet Missouri continuing education requirements even though these offerings may be approved by states with which Missouri enters into continuing education reciprocity:

- (A) Training or education not applicable to Missouri real estate practice;
- (B) Training or education in office and business skills such as typing, speedreading, memory improvement, report writing, personal motivation, salesmanship, sales psychology and time management;
- (C) Sales promotions or other meetings held in conjunction with general real estate brokerage activity;
- (D) Meetings which are a normal part of in-house training;
- (E) That portion of any offering devoted to meals or refreshments;
- (F) Sales or brokerage prelicensure education; provided, however, the education will satisfy the continuing education requirement for the license period during which the license was issued to either a new, delinquent or reactivating licensee. [Broker applicants who complete the required prelicense broker course in addition to completing one (1) year of active experience must submit the school completion certificate with the license application in order to receive continuing education credit] **New licensees will not receive continuing education credit for prelicense education after September 30, 1998;**
- (G) Any course or program that is less than three (3) hours in duration; and

(H) Taped, videotaped and similar electronically reproduced instruction, unless presented in an approved course under direct, in-person supervision of an approved instructor and unless no more than fifty percent (50%) of the course time consists of electronically reproduced instruction, except as provided under 4 CSR 250-10.075.

[(7)] (8) Hours obtained in excess of the twelve (12) hours required during each license renewal period may not be carried forward to satisfy the requirements for any subsequent renewal period.

[(8)] (9) Except as provided under 4 CSR 250-10.075, a licensee must be physically present in the classroom during one hundred percent (100%) of the actual classroom instruction. A school, at its discretion, may allow a student to be absent up to ten percent (10%) of the required hours but only for reasons of personal illness, illness or death in the student's immediate family or hazardous road conditions.

[(9)] (10) Credit will be given to a licensee for completing a specific [or substantially similar] course only once during a license renewal period.

[(10)] (11) Time spent as an instructor may be counted as classroom attendance for an approved instructor who is also a licensee. The credit may be gained by an instructor only once for each course or substantially similar course offered during any renewal period.

[(11)] (12) No part of any course for continuing education shall be used to solicit memberships in organizations, recruit licensees for affiliation with any organization or advertise the merits of any organization.

#### **4 CSR 250-10.030 Classroom Course Approval**

**(2) Applications for approval of core curriculum courses required by 4 CSR 250-10.010 (2) and the Missouri Real Estate Practice course required by 4 CSR 250-10.010 (4) must contain course outlines that closely follow the curriculum prescribed by the commission.**

[(2)] (3) All applications for course approval shall be submitted by the sponsor at least ninety (90) days prior to the date the course is expected to be offered. Applications shall be submitted on a form prescribed by the Missouri Real Estate Commission and the commission will respond in writing to all requests for course approval within sixty (60) days of receipt of a properly completed application. The commission will either assign a course number or other identification to a course when it is approved or will notify the applicant of the grounds for the course not being approved, as provided in section [(5)] (6).

[(3)] (4) Course approval will be for the duration of the license period for which approval is sought.

[(4)] (5) Course approval applications shall be accompanied by a nonrefundable fee of twenty-five dollars (\$25) per hour of continuing education credit being applied for.

[(5)] (6) If the commission determines that a proposed course does not meet prescribed standards or if the proposed course does not adequately reflect and present current real estate knowledge toward the goal of public protection and service, notice in writing specifying the deficiencies will be provided to the sponsor.

[(6)] (7) Instructors must teach all courses in close adherence to the outline on file with the commission. In the event a substantive change is proposed, the sponsor must file a revised course outline on a form prescribed by the commission at least thirty (30) days in advance of the scheduled course offering. The nonrefundable fee for filing a course revision shall be fifteen dollars (\$15) per credit hour. Approval in writing from the commission must be received prior to implementation of any substantive course change.

[(7)] (8) Dates, times and location(s) of classroom course offerings shall be submitted to the commission at least ten (10) days prior to each course offering.

[(8)] (9) [Whether given by the same or different sponsors in] **In** any given calendar day, no classroom course(s) shall exceed six (6) hours in length [and a], **and no continuing education sponsor shall issue to a licensee course completion certificate(s) for more than six (6) hours credit. A half-hour or longer** break [or more] must be given to students after four (4) hours for any course(s) exceeding four (4) hours in a given day.

## Agency: Questions & Answers

Presented below are various questions the Commission has received since the September 1, 1997 implementation of the agency law. We hope the answers and scenarios presented here will be advantageous to all licensees.

### Office Policy

**QUESTION:** Did I have to have a policy "manual" in place by September 1, 1997

**ANSWER:** The statute does not require a broker to have a policy "manual". However, the statute does require a broker to have a written policy statement in place by September 1, 1997 regarding the types of agency relationships he will allow his agents to offer to the public. The policy must identify and describe each type of relationship the company is offering. The definition or explanation of the various types of relationships are outlined in the statute.

**QUESTION:** If a broker has a current license, but does not actively list, sell or manage property, do they have to have a written office policy?

**ANSWER:** Yes, the law affects all brokers who maintain a current active Missouri license. Therefore, they must establish and maintain the written policy statement required by the statute. This includes brokers who do not have any salespeople associated with them.

**QUESTION:** Does the written policy also serve as written authorization for affiliated licensees to enter into such

agreements for brokerage services on behalf of the designated broker as required by 339.780, RSMo?

**ANSWER:** The written policy may serve as written authorization provided the authorization is specifically included in the policy statement.

### Designated Agency

**QUESTION:** A broker has numerous licensees who often work as a "team" of two or three licensees at a time. Does "designated agency" mean absolutely no more than one agent will be allowed to represent each side of the transaction?

**ANSWER:** No, multiple agents may be identified to represent a client in a designated agency situation.

**QUESTION:** Can a team of two or three represent each side of a transaction in a "designated agency" situation? (Each team would be made up of different people.)

**ANSWER:** Yes, a team of two or three may be designated by the broker or managing broker; however, the name of each team member must be identified.

### Showing Unlisted Property

**QUESTION:** Can a licensee show an unlisted commercial property to a represented buyer?

**ANSWER:** Yes, if the licensee represents the buyer as a buyer's agent or subagent, the licensee can show an unlisted commercial property to the buyer.

**QUESTION:** Can a licensee show an unlisted residential property to a represented buyer?

**ANSWER:** Yes, however the licensee must obtain written authorization from the seller to permit them to show the property.

### Agency Disclosure

**QUESTION:** Previously a licensee was required to sign an agency disclosure when acting as a seller's agent, buyer's agent or dual agent. Does this requirement still exist, and further, is it now also required that the agency disclosure be signed by a licensee in a designated agency situation or in all agency situations?

**ANSWER:** Written agency disclosures are required in all agency situations.

### Agency Agreements

**QUESTION:** Does the broker need to obtain written authorization to become a dual agent at the time he/she enters into a written agency agreement or can a written dual agency disclosure signed by all parties serve as the authorization?



**ANSWER:** The broker must have written authorization. This may be found in the employment agreement. If not provided for there, the broker will need to have a separate written authorization prior to acting in a dual agency capacity.

**QUESTION:** Why do I have to have a written buyer's agency agreement when the new statute states that I am presumed to be a buyer's agent.

**ANSWER:** The presumption is for the benefit of the other side of the transaction to ensure that confidential information is not disclosed to a potential buyer's agent. You still need a written agreement allowing you to actually represent the buyer to work on his behalf.

**QUESTION:** When I disclose that I am a designated seller's agent the prospective buyer that I have shown the property to states, "I want a buyer's agent." Can I become the buyer's agent (dual agent) if I have permission from the sellers to become a dual agent?

**ANSWER:** Yes, for this particular property, the licensee would be a dual agent. A licensee must obtain written permission from all parties to become a dual agent.

### **Cooperative Agreement**

**QUESTION:** If a broker, who lives in an area where there is not a multi list service, enters into a cooperative type agreement with other brokers in the area to offer subagency, does there have to be a written subagency agreement on every listing, or can it be one agreement, for a stated period of time, which covers all listings?

**ANSWER:** One agreement to cover all listings is sufficient.

### **Enforcement**

**QUESTION:** Is the Commission going to postpone enforcement of the new agency law?

**ANSWER:** No, the law became effective September 1, 1997 and will be enforced by the Commission as of that day. The regulations that complement the new law are anticipated to become effective May 30, 1998 and will be enforced upon their effective date.

### **Agency Representation**

**QUESTION:** Does a broker have to limit their company and agents to one form of agency representation?

**ANSWER:** No. However, any agency relationships offered must be authorized in the broker's written office policy on agency.

### **Authorization to Enter Into A Written Agreement**

**QUESTION:** According to 339.780.1, RSMo, the designated broker must authorize affiliated licensees in writing to enter into a written agreement on behalf of the designated broker. What is considered written authorization? Must it be in each

agreement or can a blanket authorization be used? If blanket authorization is acceptable, does it have to list each individual or can it indicate any or all licensees with the company?

**ANSWER:** Written authorization may be contained in the office policy. It may be in a blanket format. If a blanket format is used, the authorization may simply state "all licensees" or can indicate each licensee individually.

### **Forms**

**QUESTION:** If the brokerage is using forms that have expired, do we cite for not having legal approval?

**ANSWER:** Yes, as legal approval is rescinded as of the date of expiration.

**QUESTION:** Do all current listings in effect prior to the statute change on September 1, 1997 have to be changed?

**ANSWER:** No, as these agreements were in effect prior to the statute change. Any agreements entered into after September must comply with the new statute.

### **Broker Disclosure Forms**

**QUESTION:** Does a Broker Disclosure Form need to be given/delivered on a deal where the contract has been signed prior to September 1, 1997 but has not closed?

**ANSWER:** No, as the agency relationships were formed prior to the agency statute becoming effective on September 1, 1997.

**QUESTION:** What is considered substantial contact for determining when the disclosure form should be provided?

**ANSWER:** While it is impossible to define each possibility examples of substantial contact would be when personal, qualifying or financial information has been obtained.

*SITUATION: A past newsletter stated that the only changes a broker could make to the Disclosure Form was placing an "X" by the choices available and adding the entity name and address.*

**QUESTION:** Can a licensee type in their name under the "Print Name of Licensee" section and copy it to save time, or does the name have to be printed each and every time?

**ANSWER:** The licensee may type in their name before copying the form for use.

**QUESTION:** Can the signature area/date be highlighted so that people will correctly sign/fill out the form?

**ANSWER:** Yes, highlighting would be no different than printing on colored paper and is therefore acceptable.

**QUESTION:** On the Broker Disclosure Form does a broker or entity have to put both their name and address in the box provided for this information? If so, does the broker or entity



have to identify the address of the main office or could it be the branch office where the agent is working?

**ANSWER:** A broker/entity must put both their company name and address in this box. The address used by the broker/entity is the decision of the broker; either is acceptable.

**QUESTION:** Can the Broker Disclosure Form be printed on colored paper and can they use colored ink?

**ANSWER:** Yes, but the content of the form CANNOT be changed.

**QUESTION:** Where on the Broker Disclosure Form can a broker/entity put their logo?

**ANSWER:** The logo can either be placed in the box provided for the broker/entity name and address, or in the blank space below this box.

**QUESTION:** My E & O insurer requires me to keep a complete copy of any and all documents pertaining to a transaction. Can I have the Broker Disclosure Form printed on NCR paper to have a complete copy of what was given to the customer.

**ANSWER:** Yes, you may print the Broker Disclosure Form on NCR paper. You may not, however, alter the appearance of the form.

**QUESTION:** By only checking designated agency on the Broker Disclosure Form, does this encompass the other options as well or should they all be checked?

**ANSWER:** Checking only designated agency does not encompass all other options. Other possible options should be checked as well as designated agency.

**QUESTION:** Can a brokerage pick and choose what relationships it offers to each particular member of the public or must all members of the public have the choice of all relationships offered by the brokerage as defined by its agency policy?

**ANSWER:** They can pick and choose what relationship they will consider with a consumer.

**QUESTION:** If the brokerage can choose the agency relationships offered to each particular member of the public, does the Broker Disclosure Form under "Choices Available To You With This Firm", need to identify all of the types of agency relationships authorized by the brokerage in its written policy on agency or should the brokerage mark only those options it has decided to offer that particular customer?

**ANSWER:** It is the intent of the form to disclose all the relationships authorized by the brokerage. The Disclosure Form must reflect all relationships offered by the brokerage.

**QUESTION:** Do real estate agents have to provide the Broker Disclosure Form if they are selling their own home as a FSBO, or if they manage their own rental property?

**ANSWER:** While this is always a good idea, the statute does not require real estate agents to provide this form for the sale or rental of property they own, if not acting as a licensee.

**QUESTION:** In a company that practices designated agency, can an agent on floor duty who has not been designated as a seller's agent show a property to a buyer prior to giving out a Broker Disclosure Form?

**ANSWER:** Yes, because the agent would be presumed a buyer's agent provided substantial contact has not occurred.

**QUESTION:** Can an agent, either the listing agent or another agent within a company that does not practice designated agency, show the listing to a buyer without first providing the Broker Disclosure Form?

**ANSWER:** No. Because the licensee will be acting as an agent for the seller, he must first provide disclosure to the other party before conducting any non-ministerial acts.

**QUESTION:** Must a licensee representing a buyer provide a Broker Disclosure Form to an unrepresented seller prior to showing their property?

**ANSWER:** Yes. 339.770.4, RSMo states that before engaging in any of the activities enumerated in section 339.010, RSMo, a licensee must provide the Broker Disclosure Form to the unrepresented seller.

**QUESTION:** On an expired lease, listing or agreement renewal, does the agent need to provide a Broker Disclosure Form to the customer?

**ANSWER:** Yes, because there is not a current agreement in force.

**QUESTION:** What about unexpired renewals, does the agent need to provide a Broker Disclosure Form to the client?

**ANSWER:** No, as a written relationship is in existence and the time frame is being extended.

**QUESTION:** A Missouri broker has a Missouri client (tenant) who is doing numerous real estate leases throughout the United States, Canada, and possibly overseas. Some of the landlords are represented by real estate agents; others are owner/landlords without representation. Out-of-state law does not require the Disclosure Form. Must the disclosure form be given to the owner/landlord per Missouri law, even though the leases/locations are outside the State of Missouri?

**ANSWER:** No, the Broker Disclosure Form deals with Missouri properties only.

**QUESTION:** If I am only conducting property management, do I have to give the Broker Disclosure Form to all of the prospective tenants that I meet?

**ANSWER:** Yes, the statute requires the form to be given to all people, whether a prospective seller, landlord, buyer, or tenant, who has not already entered into a written agreement for representation.

**QUESTION:** How does the broker/licensee fill out the required "Broker Disclosure Form" in a sublease situation since we are not allowed to revise the "Disclosure Form"; and the names and/or parties will be different than the choices listed on the Disclosure Form?

**ANSWER:** When filling out the Broker Disclosure Form in a sub-lease transaction, the original tenant becomes the landlord and should be reflected as such on the Broker Disclosure Form. The Disclosure Form would not need to be provided to the original landlord. It would be provided to the original tenant and the potential tenant as relationships may be formed.

*SITUATION: A property management company does only landlord representation. The Broker Disclosure Form is presented to the owner at the time they enter into an agreement.*

**QUESTION:** Does the licensee provide the Broker Disclosure Form to every potential tenant stating that they represent the landlord of the property, or do they just show it to those who sign a lease agreement?

**ANSWER:** The form must be provided to all potential tenants, not just the ones who sign a lease.

**QUESTION:** Do they have to do anything with the current tenants?

**ANSWER:** No, only for transactions or potential clients after September 1, 1997

*SITUATION: A broker who primarily conducts property management has an unlicensed leasing agent.*

**QUESTION:** Does the unlicensed leasing agent have to provide the Broker Disclosure Form?

**ANSWER:** Yes, as the supervising broker is required to see that the customer receives the Broker Disclosure Form.

**QUESTION:** If so, what agent's name goes in the licensee blank on the form?

**ANSWER:** The designated broker's name. The designated broker may want the unlicensed individual to initial or include their name beside the broker's name so the broker will know who provided the form.

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## Disciplines

**Cox, David W.**  
Kansas City, MO

By order from the Commission, Mr. Cox's license was placed on six months probation starting December 27, 1997 through June 27, 1998.

Violations: 339.100.2 (5), (14), and (18), RSMo 1994

Cox failed to have the buyers initial a change made to the sales contract. Cox signed the seller's and buyers' names to an addendum to the contract which obligated the seller to pay the buyer's loan origination fee of \$300.

**Cummings, Donna M.**  
Hamilton, MO

By settlement agreement with the Commission, one year probation starting October 1, 1997 through October 1, 1998.

Violation: 339.100.2 (18), RSMo 1994

Cummings was a listing agent for a commercial property. Cummings allowed an individual to remove the basement door to gain entry into the basement. Cummings did not report this action to the property owner. The listing agreement did not provide for the removal of the basement door from its hinges. After the individual was allowed access to the basement, several glass bottles that were in the basement were reported as broken or missing.

**Dickhut, Stephen E.**  
Chesterfield, MO

By order of the Commission, Dickhut's license was revoked on December 27, 1997.

Violations: 339.100.2 (2) and (17), RSMo 1994

On February 8, 1995, Dickhut pled guilty in federal court to one count of equity skimming.

**Dulaney, Brad W.**  
Kansas City, MO

By joint stipulation with the Commission, Mr. Dulaney's license was placed on two years probation starting September 18, 1997 through September 18, 1999.

Violations: 339.100.2 (10), (14), and (15), RSMo 1994

On approximately September 26, 1996, Dulaney renewed his salesperson license. On his renewal application he disclosed that he had been convicted of non-payment of child support. Dulaney intentionally failed to disclose that in 1992 he pleaded guilty to burglary.

**Kimmi, Cheryl**  
Lenexa, KS

By settlement agreement with the Commission, Kimmi's license was revoked effective July 28, 1997.

Violations: Section 339.100.2 (1), (3), (14), and (18), RSMo 1994., Section 339.105.1 and .4, RSMo; 4 CSR 250-4.030(1), 250-8.090(3) and (4), 250-8.095(1)(B)2, 250-8.100(1) and (3), 250-8.120(1), (4), (6) and (7), 250-8.140(1), 250-8.150(1), and 250-8.160(1).

A random audit of the licensee's real estate records revealed a shortage of \$10,007.72 in the escrow account and in numerous instances the following additional violations were found: 1) Kimmi did not date the written agency disclosure; 2) changes made to a sales contract and/or listing agreement were not signed and dated by the seller; 3) Kimmi deposited earnest money into the company operating account instead of the escrow account; 4) late deposits of earnest money into the company escrow account; 5) funds were disbursed from the escrow account prior to closing without written authorization; 6) Kimmi failed to identify the payees on closing statements; 7) failed to timely disburse funds from escrow at the closing of a transaction; 8) distributed inaccurate closing statements to the buyer and seller; 9) Kimmi prepared and used a form that had not been approved by legal counsel; 10) commingled personal funds in the escrow account as commissions earned were not removed; 11) rental funds were incorrectly deposited into the sales escrow account and/or the company's operating account; and 12) the property was not properly identified in the listing agreement.

**Patterson, Charles E.**  
Joplin, MO

By order of the Commission, Patterson's salesperson license was revoked on September 1, 1997.

Violations: 339.100.2 (10) and (15), RSMo 1994

On December 12, 1995, Patterson submitted an application for a salesperson license. Patterson falsified his application as he did not disclose a prior criminal conviction. On December 15, 1980, Patterson entered a plea of guilty to the charge of sexual abuse in the first degree, of a girl less than twelve years.

## Continuing Education Credits

Your address label shows credits entered into your record from rosters submitted by course providers through December 31st. "R" means core course, "E" shows elective hours. The number behind the letter indicates the number of credits recorded. "R3" indicates core course completed, "R12" or "R3E9" means your education is completed.

## Renewal Information

It's that time again!!! Yes, renewal time is here. To assure receipt of your renewal application, notify this office in

writing immediately if the address on this newsletter is incorrect. We must also be notified in writing, if your business address has changed.

All broker, corporation, partnership, association, broker-officer, broker-partner, broker-associate, broker-salesperson, inactive broker and professional corporation broker-salesperson licenses will expire on June 30, 1998. Broker renewal applications will be mailed around April 15th. Call the Commission office if your renewal application is not received by the middle of May.

All salesperson, inactive salesperson and professional corporation salesperson licenses will expire on September 30, 1998. Salesperson renewal applications will be mailed around the first of July. If you have not received your renewal application by the end of July, you should call the Commission office.

Take your continuing education courses early. The earlier you register for the courses, the better selection of subject and date choices. When it gets close to June 30th and September 30th, classes fill up very fast. If your 3 hour core course and 9 hours of elective credit are not completed prior to the expiration of your license, the respective 48 hour prelicense broker or 60 hour prelicense salesperson course will need to be completed before you will be permitted to renew your license as active.

An individual, whose license is current, may change status, transfer or go inactive and simultaneously renew by only paying the renewal fee. Should the licensee want to make such changes, the licensee should discard the envelope received with their renewal and send the renewal application, change form and renewal fee to the Missouri Real Estate Commission, P. O. Box 1339, Jefferson City, MO 65102.

Below is a checklist of things to do to insure that your renewal application will be processed smoothly:

1. Read instructions thoroughly;
2. Make any corrections in phone number, including area code, or address in the space provided on the renewal application. (Contact this office for the appropriate renewal fee if your residence address changes to another state);
3. Submit the renewal after CE hours are completed;
4. Only attach continuing education certificates for the hours the renewal application indicates are still needed;
5. Answer the questions on the application;
6. Sign and date the application; and
7. If renewing and requesting credit for continuing education hours taken from a sponsor that is not accredited in Missouri, request the individual request form from the Commission office. Submit the renewal application, individual request form and separate checks for the renewal fee and the individual request fee.

Mail your renewal early. Broker renewal applications received after June 30th and salesperson renewal applications received after September 30th will be assessed a late fee of \$50.00 per month or partial month not to exceed a total of \$200.00.

Missouri Real Estate Commission  
3605 Missouri Boulevard  
P.O. Box 1339  
Jefferson City, MO 65102

Bulk Rate  
U.S. POSTAGE  
PAID  
Permit 33  
Jefferson City, MO 65101